

Larry Faul Oldsmobile Co., Inc; Union Leasing Co., Inc. and Machinery, Scrap Iron, Metal and Steel Chauffeurs, Warehousemen, Handlers, Helpers, Alloy Fabricators, Theatrical, Exposition, Convention and Trade Show Employees, Local Union No. 714, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Petitioner. Case 13-RC-15481

June 22, 1982

DECISION ON REVIEW AND DIRECTION

BY MEMBERS JENKINS, ZIMMERMAN, AND
HUNTER

On December 21, 1981, the Regional Director for Region 13 issued a Decision and Direction of Election in the above-entitled proceeding, in which he found appropriate for the purposes of collective bargaining a unit consisting of all automobile sales representatives in the new, used, fleet, and lease departments at the Employer's facility, excluding finance and insurance managers or sales representatives, lot boys, new car receptionist/inventory control clerk, lease receptionist, parts salesmen, warranty manager, service salesmen, service clerk, new vehicle preparation manager and assistant, car billers, cashiers, office manager, computer operator, office clerical employees, employees now represented by other labor organizations, guards and supervisors as defined in the Act, and all other employees. Thereafter, in accordance with Section 102.67 of the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Employer filed a timely request for review of the Regional Director's Decision and Direction of Election, contending that the finance and insurance salespersons, the new car receptionist/inventory control clerk, the fleet sales administrator/part-time salesperson, and the lease department receptionist/part-time salesperson should be included in the appropriate unit.

By telegraphic order dated February 5, 1982, the National Labor Relations Board granted the Employer's request for review¹ of the Regional Director's decision to exclude several classifications from the unit. Thereafter, the Employer filed a brief on review.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

¹ The election was conducted by mail ballot with the ballots returned to the Regional Office on January 29, 1982. The ballots were impounded pending the Board's decision on review.

The Board has reviewed the entire record in this case and makes the following findings:

Finance and Insurance Salespersons

The Employer is engaged in the business of selling, leasing, and servicing automobiles. The Employer's operation is divided into three separate sales departments—new car, used car, and fleet—a lease department, a service department, and a business office. Each department is managed by a different individual, who supervises all employees within that department. The new car, used car, fleet, and lease departments each employ several automobile salespersons, whose main function is to persuade customers to purchase or lease automobiles. In addition, each of these departments employs a finance and insurance salesperson, whose main function is to persuade customers who have decided on an automobile to purchase insurance, extended service warranties, and additional accessories and to obtain financing through the Employer. In performing these functions, the finance and insurance salespersons are involved in every purchase or lease of an automobile. Thus, after an automobile salesperson successfully completes a sale or lease, he takes the customer to the finance and insurance salesperson in his department, who will then attempt to sell the customer warranties, insurance, financing, and additional accessories. The automobile salesperson may either leave the customer alone with the finance and insurance salesperson or remain during their discussion. In approximately 80 percent of all sales, the finance and insurance salespersons successfully persuade customers to finance their automobile through the Employer. Additionally, on occasion, in the absence of any department managers, an automobile salesperson will ask the finance and insurance salesperson in his department to approve a sale.

The finance and insurance salespersons also engage in some direct sales and leasing of automobiles. Although they do not regularly take turns greeting customers as they enter the Employer's premises, they may greet and begin talking to a customer if no automobile salesperson is available when the customer arrives. In addition, if a finance and insurance salesperson discovers during a credit check that a customer cannot qualify for financing of the automobile the customer has chosen, he will attempt to sell or lease the customer a less expensive automobile.

Like the automobile salespersons, the finance and insurance salespersons receive weekly salaries, commissions, monthly bonuses, annual bonuses, and health and welfare insurance, although there are some variances in amounts received by the two

groups.² Both groups also receive the same vacation, holiday, and profit-sharing benefits, work similar hours, and receive the use of demonstrator automobiles. Further, finance and insurance salespersons attend sales meetings along with the automobile salespersons, compete in sales contests, and comply with the same dress code as the automobile salespersons.³ Moreover, as noted above, within each department both groups are supervised by the same individual.

Based on the above, we find, contrary to the Regional Director, that the finance and insurance salespersons in the new car, used car, fleet, and lease departments share a sufficient community of interest with the automobile salespersons to require their inclusion in the appropriate unit. Both the finance and insurance salespersons and the automobile salespersons are primarily engaged in selling, a fact which the Regional Director gave little or no weight. Even though they primarily sell different products, their selling functions are interrelated, requiring a coordinated effort between the two groups. On occasion the finance and insurance salespersons engage in the actual selling or leasing of automobiles. Further, the finance and insurance salespersons and the automobile salespersons work in constant contact with each other, share common supervision, receive similar benefits, and have the same working conditions. Given these similarities, as well as the substantial integration of operations between the two groups of salespersons, we find that a unit limited to automobile salespersons, but excluding finance and insurance salespersons, would be inappropriate. See *Coca-Cola Bottling Company of Forth Worth*, 229 NLRB 553, 554-555 (1977); *Walker-Roemer Dairies, Inc.*, 196 NLRB 20 (1972). Accordingly, we shall include finance and insurance salespersons in the appropriate unit.⁴

Fleet Sales Administrator/Part-Time Salesperson and Lease Receptionist/Part-Time Salesperson

In the fleet department, the Employer employs Bernice Caple, whose title is fleet sales administrator and part-time salesperson. In the lease department, the Employer employs Jean or Jane Frykholm, whose title is lease receptionist and part-time

salesperson. It is undisputed that these employees perform both clerical⁵ and selling or leasing functions, and consequently have some characteristics in common with both groups. Caple and Frykholm are paid on an hourly basis and perform typing and related functions. Unlike the office clerical employees, however, they work alongside the salespersons, are in constant contact with them, and are supervised by the same individual as the salespersons. Moreover, when the salespersons are busy, they sell or lease automobiles⁶ and, when successful, receive the same commission as do the salespersons. In addition, they observe the same dress code and receive similar benefits, including vacations, holidays, profit sharing, insurance, and the use of demonstrator cars, as do the salespersons. Given these similarities, and especially in light of the fact that they engage in selling or leasing on a regular, part-time basis, we find that Caple and Frykholm share a sufficient community of interest with the salespersons as to justify their inclusion in the appropriate unit. See *Sears, Roebuck and Co.*, 191 NLRB 398, 404-406 (1971).

Inventory Control Clerk and Receptionist

Sylvia Wenzel is employed in the new car sales department as an inventory control clerk and receptionist. She sits at a reception area near the rear door to the new car showroom and spends 25-30 percent of her time answering phones and greeting customers who have not been greeted by a salesperson. She also serves as secretary to the Employer's top management officials and, as such, spends 10-20 percent of her time typing and handling correspondence. The majority of her time is spent maintaining inventory records used by the salespersons, answering questions of salespersons regarding the inventory, receiving the new car purchase orders, and typing a summary of cars on order. In performing these functions, Wenzel is in constant contact with the salespersons, and she receives the same supervision, enjoys similar benefits, and observes the same dress code as the salespersons. In light of Wenzel's performance of functions integral to the selling process, her common supervision, benefits, and working conditions with the salespersons, and her regular contact with them, we find, contrary to the Regional Director, that Wenzel shares a sufficient community of interest with the salespersons to warrant her inclusion in the unit. See *Levitz Furniture Corporation*, 223 NLRB 522,

² The bonuses and commissions received by the finance and insurance salespersons are figured differently from those for the automobile salespersons. Also, the former group's insurance covers family members whereas the insurance for the latter group does not.

³ However, during one annual 8-day event when the Employer rented tuxedos for its employees, the finance and insurance salespersons in the new and used car departments wore the same color tuxedo as the department managers rather than the color worn by the automobile salespersons.

⁴ The following individuals are employed as finance and insurance salespersons in the new car, used car, fleet, and lease departments, respectively: Fred Jacobsen, Richard Law, Dorothy Payne, and Marilyn Miller.

⁵ As noted above, the Regional Director excluded office clerical employees from the unit, and neither party contests their exclusion, except for the three individuals discussed *infra*.

⁶ The record reveals that Frykholm was responsible for the leasing of one to three cars per month.

523 (1976); *Sears, Roebuck and Co.*, *supra* at 404-406.

Accordingly, we find, contrary to the Regional Director, that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All automobile sales representatives, finance and insurance managers or sales representatives, fleet sales administrator/part-time salesperson, lease receptionist/part-time salesperson, and new car receptionist/inventory control clerk, employed by the Employer at its facilities located at 1230 East Golf Road, Schaumburg, Illinois, excluding lot boys, parts salesmen, warranty manager, service salesmen, service clerk, new vehicle preparation manager and assistant, car billers, cashiers, office manager, computer operator, office clerical employees, employees now represented by other labor organizations, guards and supervisors as defined in the Act, and all other employees.

Inasmuch as the Petitioner has expressed a willingness to participate in an election in the broader appropriate unit, we shall remand the case to the Regional Director for Region 13 for the purpose of counting the mail ballots which have been impounded.⁷

DIRECTION

It is hereby directed that the Regional Director for Region 13 shall, within 10 days from the date of this Decision on Review, open and count the impounded ballots, and prepare and serve on the parties a tally of ballots. Thereafter, the Regional Director shall proceed as is appropriate in accordance with our Decision herein.

⁷ We have been administratively advised that Fred Jacobsen, Richard Law, Dorothy Payne, Sylvia Wenzel, Bernice Caple, and Jean or Jane Frykholm—all of whom we have included in the unit by this Decision—cast challenged ballots in the election. We hereby direct the Regional Director to open and count these ballots with the other impounded ballots. However, we were also advised that the Regional Director did not mail a ballot to Marilyn Miller, whom we have also included in the unit. Thus, if the tally reveals that a ballot cast by Miller could determine the results of the election, and if the Regional Director determines that Miller was eligible to vote in the election, then the election conducted by mail ballot shall be vacated and a new election conducted in the unit found appropriate herein.